



Matthew Rodriguez  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Deborah O. Raphael, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806



Edmund G. Brown Jr.  
Governor

August 16, 2012

Ms. Liza Tucker  
Consumer Advocate  
Consumer Watchdog  
1750 Ocean Park Boulevard, Suite 200  
Santa Monica, California 90405

Dear Ms. Tucker:

I want to thank you for your recent letter expressing concern regarding the Evergreen Oil re-refining facility in Newark, California. I understand and appreciate Consumer Watchdog's frustration in navigating the complexity of environmental regulations and how they apply at an individual industrial facility, particularly in emergency incidents. Our responsibility to protect communities from the harm of hazardous waste is the foundation of our mission. We are pleased to share this critical mission with Consumer Watchdog and look forward to continuing this discussion with you.

The Evergreen facility has nearly a dozen environmental permits, each establishing separate compliance requirements for the numerous operations and equipment at the site. The Department of Toxic Substances Control (DTSC), Bay Area Air Quality Management District, Regional Water Quality Control Board, Union Sanitary District and Alameda County Unified Program have granted permits to Evergreen and periodically inspect the facility. These permits reflect the current statutory and regulatory structure in California which largely address each environmental media individually and in separate areas of law. Additionally, the facility is a large quantity generator of hazardous waste, which does not require a permit but is a DTSC regulated activity.

In general terms, the facility has two operations; the first is to treat incoming waste oil and other petroleum substances into a re-refining feedstock; the second operation is to re-refine the feedstock (treated waste oil and petroleum substances) into new recycled petroleum products. In accordance with our statutes, the first stage is a waste management stage and regulated by DTSC. When the petroleum substances exit the first stage, even within a contiguous facility, they are reclassified as a product and therefore no longer subject to DTSC regulation.

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Specific to the July 6, 2012 incident, DTSC has sent inspectors to the site to evaluate and document the cause and location of the release. This inspection is in addition to the twice yearly site inspections conducted by DTSC. We have confirmed that the release occurred in a location in the facility which is not, nor in close proximity to, a hazardous waste permitted unit and is therefore not subject to DTSC's permitting and enforcement authority.

Additionally, we have confirmed that the hazardous material which was released (heat transfer fluid) is a process chemical and not a waste. This distinction is critical in the current regulatory structure and is the basis for our determination regarding the extent of DTSC's oversight of this incident and Evergreen as a hazardous waste generator. Because DTSC's enforcement authority is expressly limited to hazardous waste, and not to other hazardous materials oversight, our hazardous waste generator standards cannot reasonably be invoked by this incident.

I understand that these limitations present formidable challenges to your goal of identifying an individual entity with omnibus regulatory authority at industrial facilities. In the spirit and practice of genuine inquiry, our legal staff have explored a number of existing statutory and regulatory options for interpretive flexibility. The goal of the exercise was to identify whether DTSC has authority beyond which we now practice to allow the more holistic oversight that you seek. Our legal interpretation is that we currently do not have that authority.


I do want to inform Consumer Watchdog that our discussions with you have led us to conduct an internal review as to how we manage and respond to information regarding incidents at any of our regulated facilities. We are putting a system in place to ensure that executive staff are notified when significant incidents occur at a facility that we regulate, regardless of whether we have direct authority, and that we respond with the full authority vested in the DTSC when appropriate.

Additionally, we are conducting a global review of our existing hazardous waste facility permits and the requirements that we put in place to ensure timely notification of DTSC if incidents occur. DTSC will utilize that information to inform our understanding of the operating conditions and practices at each facility and the extent to which our permitting and/or enforcement programs may need to further evaluate a facility and its capacity to operate safely.

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Again, thank you for sharing your perspectives and for helping DTSC become an organization that better responds to hazardous waste concerns in our communities.

Sincerely,

A handwritten signature in black ink, reading "Deborah O. Raphael". The signature is fluid and cursive, with the first name "Deborah" and last name "Raphael" clearly legible.

Deborah O. Raphael  
Director

cc: Mr. Reed Sato  
Chief Counsel  
Office of Legal Affairs  
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